SRIDEVI ARUNASALAM

v.

D PUSPANATHAN THILAL

HIGH COURT MALAYA, KUALA LUMPUR
FAIZA TAMBY CHIK J
[DIVORCE PETITION NO: S8-33-35-2003]
4 SEPTEMBER 2003

FAMILY LAW: *Divorce - Petition for divorce - Wife's claim for custody, maintenance, matrimonial home, husband's EPF and Employees Shares Option Scheme contribution - Whether granted - Law Reform (Marriage and Divorce) Act 1976, s. 77, 78*

In the instant case, the petitioner wife prayed, *inter alia*, for the following: (1) her marriage with the respondent husband be dissolved; (2) the respondent pay maintenance for her and the three children of their marriage; (3) the matrimonial home; (4) the household items; (5) 1/3 of the respondent's EPF contribution; and (6) 1/3 of the respondent's net profit made from the Employees Shares Option Scheme in his place of employment. The respondent counter-claimed, inter alia, for the following: (1) custody of the children; (2) the return of the *thali* which was a symbol of their marriage; (3) the return of the necklace that was given to the petitioner as a gift or the equivalent sum of RM2,500; (4) the household items returned to the respective persons who had bought them; and (5) the maintenance for the children be shared amongst them.

Held (allowing the petition):

[1] Pursuant to s. 77 of the Law reform (Marriage and Divorce) Act 1976 the court has the power to order the husband to pay maintenance to his wife. In determining the amount of maintenance to be paid by a man to his wife the court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the respondent or petitioner as the case may be. The court shall have regard to the degree of responsibility that the court apportions to each party for the breakdown of the marriage (s. 78 of the Act.) (p 615 c-d)

[1a] The respondent's take home pay was RM3,334.30 after his car loan deduction of RM561.45 and his insurance amounting to RM143 per month. The petitioner's take home pay after her car-loan deduction was

only RM1,375.25. As such, the respondent was in a position to pay maintenance of RM800 per month to the petitioner, *ie*, RM500 a month for all three children and RM300 a month for the petitioner. (p 615 e)

[2] The petitioner and the respondent had agreed to dispose of the matrimonial home and share the proceeds equally. It was understandable that the petitioner wished to remain in the matrimonial home since she and the children would not have other means of shelter. Having stayed there for 10 years, the children were familiar with the neighbours and further, it was easily accessible to school. As such, she should be allowed to buy the respondent's 1/2 share of the house. (p 615 f-g)

[3] The respondent was an employee of Arab-Malaysian Assurance Berhad. The respondent had via the Employees Shares Option Scheme made a net profit of RM117,432.06. The 1/2 share of this amount should be given to the petitioner to be held in trust for the children. (p 615 h)

[4] Since the petitioner and the children wished to remain in the matrimonial home, she would require all the household items therein such as the furniture, fittings and electrical items as they were the basic requirements for the children. (p 616 c)

[5] The marriage between the petitioner and the respondent had existed for 13 years. There were three children to support. Following the decision in *Ching Seng Woah v. Lim Shook Lin*, the contribution to EPF is within matrimonial assets. As such, 1/3 of the amount in the respondent's EPF account as at 10 September 2003 should be granted to her to be held in trust for the children. (p 616 d-e)

[6] The facts showed that the marriage should be dissolved and the *thali* and necklace returned to the respondent. All Deepavali days should be celebrated in the matrimonial home every year. The respondent should be present in the matrimonial home during Deepavali to be together with the children and the petitioner. Custody, care and control should be given to the petitioner with reasonable access to the respondent. (p 616 f)

Legislation referred to:
Law Reform (Marriage and Divorce) Act 1976, ss. 77, 78

For the petitioner wife - Prakash Mehta; M/s Prakash & Co
For the respondent husband - Andrew Davis; M/s Andrew Davis Krishman & Co

Reported by Usha Thiagarajah

JUDGMENT

Faiza Tamby Chik J:

Enclosure (1) is the wife's petition dated 8 January 2003 praying for the following orders:

(a) Marriage be dissolved with custody, care and control of the three (3) children be given to her with reasonable access to the respondent husband;

(b) Maintenance for children and wife;

(c) Matrimonial house;

(d) Shares obtained by the respondent;

(e) Balance RM7,000 unpaid in disposing of the petitioner's car;

(f) Household things;

(g) 1/3 of respondent's EPF contribution;

(h) 1/3 of the annuity scheme respondent has contributed;

(i) costs.

Enclosure (7) is the wife's summons in chambers dated 21 January 2003 for maintenance, to stay at matrimonial house with children and injunction to refrain the respondent or respondent's family from harming her mentally or physically.

It is noted that the respondent husband in his 'Jawapan oleh Responden Suami kepada Petisyen Penceraian' dated 21 March 2003 has counterclaimed as follows:

(a) that the care, custody and control of the three children are given to the respondent;

(b) that the 'thali' which is a symbol of the marriage is returned to the respondent;

(c) that the necklace which was given as a gift to the petitioner is returned to the respondent or the sum of RM2,500;

(d) that the household items are given to the respective persons who bought them;

(e) that the petitioner shares with the respondent on the children's maintenance costs; and

(f) that the petitioner shares in the children's education costs.

There are three children born out of this marriage. They are:

Name	Age	Sex
1. Deevneshthillai (L)	4	Boy
2. Dhurkesh a/l D. Puspanathan	9	Boy
3. Denesha a/p D. Puspanathan	11	Girl

It is noted that currently the petitioner and the respondent are still staying in the same house for reasons that the petitioner do not have other means of shelter. When the petitioner and the respondent are at work the children are looked after by the petitioner's mother.

From the police report dated 12 May 2002 it is observed that the respondent is temperamental, possessive, uses abusive language in front of the children during quarrels, violent ie, hitting the petitioner with the chair, slapped and strangled her in front of children many a times prior to this petition, shows tantrums by breaking the household things (see encl. 6, exh. SD1). It is the submission of the petitioner's counsel that the respondent never spends quality time with the children. He leaves the matrimonial home to work at 8.30am and returns home only at the earliest 11pm. At weekends he disappears from the house and returns home late at midnight. At times, he disappears totally without notice from house with friends for a couple of days. In fact, the petitioner and daughter had caught him red handed enjoying himself in Port Dickson with friends while he told the petitioner that he would be away in Melaka for two days for a meeting. (See to respondent's time off returning home from work found at encl. 8, exh. SA, p. 2). The petitioner's counsel further submitted within the period of two years, ie, 2000-2002, the respondent abandoned the family and disappeared from the house for more than two weeks on two occasions leaving the children and the petitioner all alone with no money and food. The petitioner had to manage with three children aged 1, 5 and 8 years old during that time. The respondent gave an excuse that he could not tolerate the petitioner anymore and therefore left the house but despite all these agony, the petitioner held tight with the children. The respondent never spent time for coaching, guiding or teaching the children in their studies. He does not even take the effort to spend or pick the children back from their tuition classes. He neither has time for leisure with the children. The respondent goes back to his hometown in Kuala Kangsar very often, ie, every month and returns home and fights with the petitioner. The respondent is always instigated by his sisters. The respondent claims to be a good father but he hardly spends money on buying children's clothes but instead happily shops for himself (see para. 26 to 33 of the petition dated 8 January 2003, encl. 1). The respondent

never celebrated Deepavali with the petitioner and the children in their own home since married for 13 years. He always disappears two or three days in advance to Kuala Kangsar before Deepavali and returns home only after a week or so. The respondent takes the children forcefully with him to Kuala Kangsar leaving the petitioner behind in Kuala Lumpur to celebrate Deepavali. The respondent had not repaired household things that need repair such as the air-condition (not in working order since January 2003), washing machine (not working since May 2003), hot water boiler (since May), toilet bowl (since three years), bathroom doors, and the respondent refused to repair them or purchase new electrical items for the family. I note that the respondent's counsel never responded to these submissions except to state in any event the petitioner is at liberty to repair them herself or to replace those items.

It is noted that the petitioner's take home pay per month is RM1,782.25. She works as a secretary and the household expenses per month is as follows:

	RM
(a) Foods and drinks including vitamins	500
(b) Transportation to school and tuition Classes for the children	100
(c) Transportation to office and car service	200
(d) Tuition fees for the children	300
(e) Babysitting for three children (petitioner's mother)	600
(f) Expenses for emergency, medical, picnic, gifts and others (more or less)	250
(g) Expenses for school books and pocket money	300
(h) Savings for children for future education	NIL
(i) Monthly payment for petitioner's car	407
(j) Monthly payments for the house	426
(k) Payments for water, electric, telephone and others (including handphone)	300
(l) Clothes, shoes, make-up and others	500
Total	3,883

From the above, there is a shortfall of RM2,100.75 every month (RM3,883 – RM1,700). Before this it is submitted that the respondent picks up the shortfall and pays the difference. The respondent's gross income per month is RM4,095 (see exh. DP8, Afidavit Jawapan Responden (2) affirmed on 26 June 2003). And the respondent has affirmed the following as his personal expenses every month at encl. 9, para 7(g):

> Perbelanjaan diri saya sebanyak RM400.00.

But at para 7(h), the respondent request 2nd deduction for personal expenses as follows:

> Pembayaran untuk kad kredit sebanyak RM500.00

Pursuant to s. 77 Law Reform (Marriage and Divorce) Act 1976 (the Act) the court has the power to order the respondent (husband) to pay maintenance to his wife (petitioner). In determining the amount of any maintenance paid by a man to his wife the court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be, but shall have regards to the degree of responsibility which the court apportions to each party for the breakdown of the marriage (s. 78 of the Act). In our case the wife's take home pay is RM1,782.25 whereas the husband's take home pay is RM3,334.30 but the husband's pay has already been deducted for his car loan of RM561.45 and his insurance amounting to RM143 per month (refer to Affidavit Jawapan Responden (2) affirmed on 26 June 2003 at exh. DP8 for his latest salary slip). If the wife, petitioner were to deduct her car loan of RM407 from her pay, her take home pay is only RM1,375.25. Based on the above facts the husband is in a position to pay maintenance of RM800 per month to the wife.

The petitioner and the respondent have agreed to dispose of the matrimonial home and share the proceeds equally. However I note that the wife wishes to buy over the respondent half share of the house after deducting all the outstanding payment with the bank and to contra the payment by way of value of shares she is entitled to from the husband. It is understandable that the petitioner wife wishes to remain in the matrimonial home since the children and she do not have other means of shelter. Having stayed there for ten years, the children are more familiar with the neighbours and it is easily accessible to school.

I note that the respondent is an employee of Arab-Malaysian Assurance Berhad. The respondent has over the years received "Employees Shares Option Scheme". The amount of shares received and profit made by the respondent over the years has been tabulated at para 14 encl. (1). The nett profit made over the years is RM117,432.06. The respondent does not dispute the figures but now says that

the profit from the shares solely belongs to him. The respondent does not deny paying down payment of RM20,000 for a new car, spent RM10,000 to RM15,000 for down payment to buy a house for his sister in Kuala Kangsar.

It is observed that the petitioner wife previously paid a downpayment to own a car (Proton Iswara Sedan WHD 1745) whereby she took the car loan under the respondent's name for a cheaper financing purpose. However when the respondent and the petitioner could not get along, the respondent decided to sell her car and only gave her RM5,000 and pocketing RM7,000 for himself. The respondent has denied this by saying that the car belonged to him. This does go well with his reply whereby the petitioner uses the car and was given RM5,000 only. Furthermore the respondent was owning another car.

Since the petitioner wife and the children wish to remain in the matrimonial home she will be needing all the household items such as the furniture and fittings and electrical items from the matrimonial house as they are basic requirements for the children.

The marriage between the petitioner and respondent will have existed for 13 years this 10 September 2003. They have three children to support. Following the decision in *Ching Seng Woah v. Lim Shook Lin* [1997] 1 MLJ 109, this court can define the contribution to EPF as "Matrimonial Assets" and the petitioner prays the 1/3 of the amount outstanding as at 10 September 2003 in his EPF account to be given to her on maturity. The respondent's EPF as at 31 December 1989 stands at RM51,656.89 (a copy of the statement is enclosed as Annexure 'A').

For these reasons the marriage is dissolved. The Thali is to be returned. The necklace is to be returned. All Deepavali days are to be celebrated in the matrimonial home every year. It is ordered that the respondent husband be present in the matrimonial home during Deepavali to be together with all the children and the petitioner wife. Custody, care and control is to be given to wife with reasonable access to the husband. Maintenance RM500 a month each to all three children, and maintenance RM300 a month to wife. The matrimonial home is to be divided, 1/2 share to wife and 1/2 share to husband. Wife is ordered to buy the 1/2 share of husband. The 1/2 share of the Employees Share Option Scheme of the Arab Malaysian Assurance Bhd. amounting to RM117,432.06, is to be given to wife to be held in trust to all the three children. 1/3 of the amount of EPF as at 10 September 2003 is to be given to the wife holding in trust for the three children. All household things to be given to wife to be held on trust to the three children. Each party bears its own costs.